

FEDERAL ELECTION COMMISSION
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Washington, DC 20463

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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6934
DATE COMPLAINT FILED: April 17, 2015
DATES OF NOTIFICATION: April 23, 2015;
November 23, 2016
LAST RESPONSE RECEIVED: June 9, 2015
DATE ACTIVATED: November 9, 2016

EXPIRATION OF SOL: April 6, 2020
ELECTION CYCLE: 2016

COMPLAINANT:

Saul Escobar

RESPONDENTS:

Taddeo for Congress and Ralph Patino in his
official capacity as treasurer
Annette Taddeo
Charlie Crist for Governor 2014 and Stanford B.
Horwitz in his official capacity as treasurer
Charlie Crist

**RELEVANT STATUTES AND
REGULATIONS**

52 U.S.C. § 30104(b)(2)
52 U.S.C. § 30120(a)
52 U.S.C. § 30125(e)(1)(A)
11 C.F.R. § 104.3(a)(2)
11 C.F.R. § 110.11(a)(1)
11 C.F.R. § 300.61

INTERNAL REPORTS CHECKED:

None

AGENCIES CHECKED:

Florida Elections Commission

I. INTRODUCTION

The Complaint stems from multiple e-mails sent by former Florida Governor and current Representative Charlie Crist from the account "info@charliecrist.com" announcing and then endorsing Annette Taddeo's candidacy for Florida's Twenty-Sixth Congressional District in the 2016 election cycle. The Complaint alleges the Charlie Crist for Governor 2014 committee ("the

1 Crist Committee”) made and Taddeo for Congress (“the Taddeo Committee”) accepted and did
2 not report contributions in the form of e-mails sent by the Crist Committee, in violation of the
3 Federal Election Campaign Act of 1971, as amended (the “Act”). The Complaint also alleges
4 that the e-mails failed to contain the requisite disclaimers. Based on the available information,
5 we recommend that the Commission find no reason to believe that Respondents violated the Act
6 and close the file.

7 II. FACTUAL BACKGROUND

8 Following Charlie Crist and Annette Taddeo’s unsuccessful 2014 bid to become Florida’s
9 Governor and Lieutenant-Governor, respectively, Taddeo entered the 2016 race for Florida’s
10 Twenty-Sixth Congressional District. On or about April 6, 2015, prior to Taddeo’s Statement of
11 Candidacy, the account “info@charliecrist.com” sent an e-mail announcing Taddeo’s bid for
12 Congress.¹ Taddeo signed the e-mail, which contained the statement “PAID FOR AND
13 APPROVED BY CHARLIE CRIST.”² The Complaint alleges that the next day, Crist sent a
14 second e-mail endorsing Taddeo that contained the same language.³ The Complaint alleges that
15 the e-mail was sent to “contacts from Charlie Crist’s campaign list,” and that the account used to
16 send the e-mail is owned and operated by the Crist Committee.⁴ Based on the above
17 information, the Complaint alleges that the Crist Committee made improper contributions to the
18 Taddeo Committee with nonfederal funds, the Taddeo Committee did not report the
19 contributions, and that the e-mails lacked the required disclaimer.

¹ Compl. at 1 (Apr. 17, 2015). Taddeo filed her statement of candidacy with the Commission on April 9, 2015. See FEC Form 2, Annette Taddeo.

² Compl. at 4.

³ *Id.* at 1, 5.

⁴ *Id.* at 1.

1 The Crist Committee counters that the e-mail account never belonged to the Crist
2 Committee.⁵ It states that Crist registered the domain "charliecrist.com" in 2004 and renewed it
3 in 2014.⁶ Moreover, it argues that Crist has run for various state and federal offices during that
4 time, and "one cannot assume" that the list was created in 2014 by the Crist Committee and not
5 his other campaigns.⁷

6 Both Committees argue that Crist, not the Crist Committee, owned the e-mail account in
7 question when the e-mails were sent.⁸ They explain that under Florida law, a committee has 90
8 days following the elimination or withdrawal of a candidate to dispose of the funds in the
9 campaign account, but that campaign assets such as e-mail addresses and lists are not subject to
10 this "liquidation rule," and instead become the candidate's property after the committee
11 terminates.⁹ They conclude that because the Crist Committee terminated two months before the
12 e-mails, the Crist Committee did not make a contribution because it had ceased to exist, and,
13 assuming the Crist Committee ever owned the account and list, they had reverted back to Crist
14 under Florida law by the time of the e-mails.

15 Respondents also argue that Crist's internet activity is excepted from the definition of
16 "contribution" under the Act, so the Taddeo Committee was not obligated to report the e-mails as

⁵ Horwitz Resp. at 2.

⁶ *Id.*

⁷ *Id.*

⁸ Horwitz Resp. at 1-2; Taddeo Resp. at 1. Crist was notified in his personal capacity, but he did not respond.

⁹ Horwitz Resp. at 1-2; Taddeo Resp. at 1; *see* F.S.A. § 106.141.

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1 contributions. Finally, they contend that these particular e-mails are not public communications,
2 and thus did not require disclaimers.¹⁰

3 III. LEGAL ANALYSIS

4 Any funds solicited, received, or spent by a candidate for federal office must be "subject
5 to the limitations, prohibitions, and reporting requirements of [the] Act."¹¹ The Act defines a
6 contribution as "any gift, subscription, loan, advance, or deposit of money or anything of value
7 made by any person for the purpose of influencing any election for Federal office."¹² All
8 political committees must file periodic reports with the Commission that disclose contributions
9 received during the reporting period.¹³ A contribution, however, does not include an individual's
10 uncompensated services related to Internet activity, whether acting independently or in
11 coordination with a candidate, such as "[s]ending or forwarding electronic messages."¹⁴

12 The Act and Commission regulations require certain types of communications to contain
13 disclaimers that include specific types of identifying information.¹⁵ The required information
14 includes the identity of who paid for the communication, whether it was authorized by a
15 candidate's political committee, and if not authorized by a candidate's committee, the contact
16 information of the person who paid for the communication.¹⁶ The disclaimer requirement
17 covers, among other things, public communications, "electronic mail of more than 500

¹⁰ Taddeo Resp. at 2; Horwitz Resp. at 2.

¹¹ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

¹² 52 U.S.C. § 30101(8)(A)(i); 11 C.F.R. § 100.51.

¹³ 52 U.S.C. § 30104(b)(2); 11 C.F.R. § 104.3(a)(2).

¹⁴ 11 C.F.R. § 100.94.

¹⁵ See 52 U.S.C. § 30120; see also 11 C.F.R. § 110.11.

¹⁶ 52 U.S.C. § 30120(a)(1)-(3); 11 C.F.R. § 110.11(b)(1)-(3).

1 substantially similar communications when sent by a political committee," and "all
2 electioneering communications by any person."¹⁷ A "public communication" does not include
3 "communications over the Internet, except for the communications placed for a fee on another
4 person's Web site."¹⁸ An electioneering communication is a "broadcast, cable, or satellite
5 communication that," among other things, "[r]efers to a clearly identified candidate for Federal
6 office" and is "distributed within 60 days before a general election ... or within 30 days before a
7 primary election" for the office the identified candidate is seeking.¹⁹ The disclaimer
8 requirement, however, does not apply to e-mails sent by individuals.²⁰

9 Under Florida law, a candidate who is eliminated or elected to office has 90 days to
10 "dispose of the funds on deposit in his or her campaign account and file a report reflecting the
11 disposition of all remaining funds."²¹ One option for disposing of surplus funds is to give the
12 funds to the state.²² The Florida Elections Commission has determined that this disposition of
13 funds requirement does not apply to a campaign's non-monetary assets.²³ Accordingly, after the

¹⁷ 11 C.F.R. § 110.11(a).

¹⁸ *Id.* at § 100.26.

¹⁹ *Id.* at § 100.29(a).

²⁰ See *Internet Communications and Activity*, FED. ELECTION COMM'N, <http://www.fec.gov/pages/brochures/internetcomm.shtml>. "What are the rules for sending personal e-mails regarding political topics or federal elections? Basically, there are no rules for individuals. Individuals may send unlimited e-mails on any political topic without identifying who they are or whether their messages have been authorized by any party or campaign committee. 11 CFR 110.11(a)."

²¹ Fla. Stat. § 106.141(1).

²² *Id.* at § 106.141(4)(a)(4)(a).

²³ Florida Div. Election Op. DE 05-01 (Irvine) ("Items purchased by a candidate with campaign funds for use during the campaign which still have a residual value are not subject to the surplus funds disposition requirements contained in section 106.141, Florida Statutes.").

1 termination of his or her campaign, a candidate may keep items purchased with campaign funds
2 that have residual value.²⁴

3 The Crist Committee argues that it never owned the account, and that one cannot assume
4 the list used was the Committee's and not one created by one of Crist's past campaigns.

5 However, even if the Committee did own the account and list during the campaign, it appears
6 that at the time the e-mails were sent, Crist owned them, not the Crist Committee.²⁵ The Florida
7 Elections Commission's records reveal that on February 1, 2015, two months before the e-mails
8 were sent, the Crist Committee issued a check for \$35,006.79 to the State of Florida with the
9 memo line "excess funds."²⁶ Further, the Crist Committee's treasurer maintains that the
10 Committee filed a termination report with the state on February 2, 2015.²⁷ Although the exact
11 date the e-mail and list became Crist's property is unclear, it appears that the list reverted to Crist
12 by the time the e-mails were sent on or about April 6, 2015.

13 In addition, there is no information supporting the conclusion that Crist acted on behalf of
14 the Crist Committee when he sent the e-mails. In his response, the Crist Committee's treasurer
15 stated that he did not make or authorize any expenditures on behalf of the campaign to send the
16 e-mails.²⁸ This statement is bolstered by the disclaimer on the e-mails: "PAID FOR AND

²⁴ *Id.* ("[T]he statute contains no language that would require the liquidation of and/or disposition of *any other assets* of the campaign.") (emphasis added).

²⁵ The e-mails were sent before Crist became a candidate for federal office. Crist filed his statement of candidacy for Florida's Thirteenth Congressional District on December 14, 2015. See FEC Form 2, Charlie Joseph Crist. Although at the time the e-mails were sent, the domain charliecrist.com belonged to Crist personally, it appears to have since been converted for use by his House campaign committee.

²⁶ FLORIDA CAMPAIGN DOCUMENTS SEARCH, <http://dos.elections.myflorida.com/campaign-docs/?account=61166> (last visited Jan. 4, 2017). The Crist Committee also issued a check to the State of Florida on May 22, 2015, for \$23,066.79. *Id.*

²⁷ See Horwitz Resp. at 1.

²⁸ *Id.*

1 APPROVED BY CHARLIE CRIST.” Based on the available information, it appears that Crist
2 sent the e-mail as an individual using assets he personally owned—the e-mail address and list.
3 Thus, Crist’s actions constituted uncompensated Internet activity by an individual, which is not a
4 contribution under the Act. Similarly, because the Crist Committee did not own the list or
5 account, it did not make an improper contribution to the Taddeo Committee, and the Taddeo
6 Committee did not violate the Act by failing to report the contributions or by receiving any non-
7 federal funds.

8 Further, because Crist sent the e-mails in his personal capacity and not on behalf of the
9 Crist Committee or any other political committee, and because e-mails do not meet the definition
10 of either a “public communication” or “electioneering communication,” the disclaimer
11 requirement would not apply to his communications.²⁹ Accordingly, we recommend that the
12 Commission find that there is no reason to believe that Respondents violated the Act.

13 V. RECOMMENDATIONS

- 14 1. Find no reason to believe that Taddeo for Congress and Ralph Patino in his official
15 capacity as treasurer and Annette Taddeo violated 52 U.S.C. § 30104(b)(2),
16 52 U.S.C. § 30120(a), 52 U.S.C. § 30125(e)(1)(A), 11 C.F.R. § 104.3(a)(2), 11
17 C.F.R. § 110.11(a)-(b), and 11 C.F.R. § 300.61;
18
- 19 2. Find no reason to believe that Charlie Crist for Governor 2014 and Stanford B.
20 Horwitz in his official capacity as treasurer and Charlie Crist violated 52 U.S.C.
21 § 30104(b)(2), 52 U.S.C. § 30120(a), and 11 C.F.R. § 110.11(a)-(b);
22
- 23 3. Approve the attached Factual and Legal Analysis;
- 24 4. Approve the appropriate letters; and


²⁹ 11 C.F.R. § 110.11(a); *supra* note 21. Even so, the e-mails contained disclaimers saying the Crist paid for and approved them.

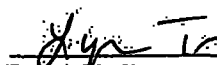
5. Close the file.


Lisa J. Stevenson
Acting General Counsel

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2.7.17
Date


Stephen Gura
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Derek H. Ross
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Attachment
Factual and Legal Analysis